

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GAVRIEL SHMUELI,

Plaintiff,

v.

Case No. 24-cv-12388
Honorable Linda V. Parker

ALEJANDRO N. MAYORKAS, *et al.*,

Defendants.

**OPINION AND ORDER (1) GRANTING DEFENDANTS' MOTION TO
DISMISS COUNT I (ECF NO. 13) AND (2) PERMITTING PLAINTIFF
TO RESPOND TO DEFENDANT'S MOTION TO
DISMISS COUNT II (ECF NO. 14**

On September 11, 2024, Plaintiff Gavriel Shmueli initiated this lawsuit against Defendants Alejandro Mayorkas, United States Department of Homeland Security Secretary;¹ Reginald Stephens II, Transportation Security Authority

¹ As noted by the United States Attorney's Office, Federal Rule of Civil Procedure 25(d) states that an action against a public official in their official capacity does not abate when that official ceases to hold office. (*See* ECF No. 14 at PageID.141 n.1.) "The officer's successor is automatically substituted as a party" and "[l]ater proceedings should be in the substituted party's name." Fed. R. Civ. P. 25(d). Secretary Mayorkas is no longer the Secretary of Homeland Security and has been succeeded by Kristi Noem. (*See* ECF No. 14 at PageID.141 n.1.)

Relatedly, when a plaintiff who is employed by the federal government brings a claim under Title VII of the Civil Rights Act of 1964 ("Title VII") against his

(“TSA”) Federal Security Director; Clinton Shrum, TSA Transportation Security Manager; Constance Balfour, TSA Supervisory Program Analyst; and Doe Defendants 1-10, TSA employees (collectively, “Defendants”). (ECF No. 1.) Mr. Shmueli claims that Defendants discriminated against him based on his religion and failed to accommodate his religious beliefs and practices during his employment at TSA at the Detroit Wayne County Metropolitan Airport. (*See generally* ECF No. 10.) He asserts two counts in his amended complaint. (*See id.* at PageID.55-60.) Count I is asserted against all Defendants under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) and the First Amendment, U.S. Const. amend. I, and Count II is brought against Secretary Noem² under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.* (*Id.*)

On April 25, 2025, Defendants Mayorkas, Stephens, Shrum, and Balfour filed a motion to dismiss Count I of Mr. Shmueli’s amended complaint against them in their individual capacities pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 13.) That same day, Secretary Noem filed a motion to dismiss

employer, his claim is essentially against the head of the department. *See* 42 U.S.C. § 2000e-16(c).

Therefore, Secretary Noem is automatically substituted for former Secretary Mayorkas as the defendant for Count II of Mr. Shmueli’s amended complaint. Secretary Mayorkas will, however, remain a defendant in this matter in his personal capacity under Count I of the amended complaint.

² *See supra* note 1 and accompanying text.

Count II of Mr. Shmueli's complaint in accordance with Federal Rule of Civil Procedure 12(b)(6). (ECF No. 14.)

Mr. Shmueli did not respond to either motion. As a result, the Court issued two show cause orders on June 3, 2025, requiring Mr. Shmueli to show cause, in writing, as to why the motions to dismiss should not be granted. (*See* ECF No. 16 at PageID.172; ECF No. 17 at PageID.714.) In his timely response to the orders, Mr. Shmueli explains that his counsel's law firm recently employed a litigation paralegal who made several clerical mistakes, including calendaring the deadlines in this matter. (*Id.* at PageID.176.) He also concedes that the arguments in Defendants' motion to dismiss Count I, ECF No. 13, are persuasive, thereby agreeing with the relief sought by Defendants. (*Id.*) With respect to Secretary Noem's motion and in light of the aforementioned clerical errors, Mr. Shmueli requests additional time to file an opposition brief. (*Id.*)

Accordingly,

IT IS ORDERED that Defendants' motion to dismiss Count I of the amended complaint, ECF No. 13, is **GRANTED**.

IT IS FURTHER ORDERED that Mr. Shmueli may respond to Secretary Noem's motion to dismiss Count II of the amended complaint, ECF No. 14, within

seven (7) days of this Order.

SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: July 11, 2025